

DEFENDANT KROGER'S ANSWER FILED IN STATE COURT

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

EBONY BURROUGHS,

Plaintiff,

v.

THE KROGER CO.,

Defendant.

CIVIL ACTION FILE NO.  
23EV006980

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DEFENDANT THE KROGER CO.'S ANSWER AND DEFENSES  
TO PLAINTIFF'S COMPLAINT FOR DAMAGES BY SPECIAL APPEARANCE

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COMES NOW The Kroger Co., named as a Defendant in the *Complaint for Damages* of Plaintiff Ebony Burroughs (hereinafter referred to as "Plaintiff"), by and through undersigned counsel, and files this, its *Answer and Defenses by Special Appearance* thereto, further showing this Honorable Court as follows:

**FIRST DEFENSE**

For a first defense, The Kroger Co. ("Defendant" or "Kroger") responds to the enumerated paragraphs of Plaintiff's *Complaint for Damages* (henceforth referred to as "Plaintiff's *Complaint*") as follows:

**JURISDICTION AND PARTIES**

1.

Admitted.

2.

Admitted.

3.

Denied. The alleged incident was reported at Kroger Store #412 located at 590 Cascade Road, Atlanta, Georgia 30310.

**STATEMENT OF THE CASE**

4.

Admitted.

5.

In response to the averments alleged in this Paragraph 5 of Plaintiff's *Complaint*, Defendant states that it understands that on October 31, 2021, Plaintiff Ebony Burroughs reportedly was present at Kroger Store #412 located at 590 Cascade Road, Atlanta, Georgia 30310. The remaining averments are denied.

6.

In response to the averments alleged in this Paragraph 6 of Plaintiff's *Complaint*, Defendant states that it understands that on October 31, 2021, Plaintiff Ebony Burroughs reportedly was present at Kroger Store #412 located at 590 Cascade Road, Atlanta, Georgia 30310.

7.

Defendant is without knowledge or information to either admit or deny the averments alleged in this paragraph; Defendant admits that Plaintiff Ebony Burroughs reported falling at Kroger Store #412 located at 590 Cascade Road, Atlanta, Georgia 30310 on October 31, 2021, as a result of blueberries on the floor. Defendant denies all allegations in this Paragraph of Plaintiff's *Complaint* which it has not expressly admitted.

8.

Paragraph 8 calls for no response. Defendant admits that it was subject to applicable legal duties as was Plaintiff. Defendant denies the averments alleged in this Paragraph 8 of Plaintiff's Complaint which it has not expressly admitted.

9.

Defendant admits that it is the owner of the Kroger grocery store located at 3425 Cascade Road, Atlanta, Georgia 30311. Defendant denies that Kroger grocery store is involved with the subject incident.

10.

Defendant admits it operated the Kroger Store #412 located at 590 Cascade Road, Atlanta, Georgia 30310 on October 31, 2021, as a lease tenant on the date specified. Defendant admits that it was subject to applicable legal duties as was Plaintiff. Defendant denies the averments alleged in this Paragraph 10 of Plaintiff's Complaint which it has not expressly admitted.

11.

Defendant admits that it was subject to applicable legal duties as was Plaintiff. Defendant denies the averments, including subparts, alleged in this Paragraph 11 of Plaintiff's Complaint which it has not expressly admitted.

12.

The averments alleged in this Paragraph 12 of Plaintiff's Complaint are denied, and strict proof therefore is hereby demanded.

13.

The averments alleged in this Paragraph 13 of Plaintiff's Complaint are denied, and strict proof therefore is hereby demanded.

14.

The averments alleged in this Paragraph 14 of Plaintiff's Complaint are denied, and strict proof therefore is hereby demanded.

15.

The averments alleged in this Paragraph 15 of Plaintiff's Complaint are denied, and strict proof therefore is hereby demanded.

16.

The averments alleged in this Paragraph 16 of Plaintiff's Complaint are denied, and strict proof therefore is hereby demanded.

17.

For a response to any averments alleged in the "WHEREFORE" paragraph of Plaintiff's *Complaint*, Defendant denies same as written and demands strict proof thereof.

18.

Any averment contained in Plaintiff's *Complaint* which has not been expressly admitted by Defendant in this, its *Answer and Defenses*, is hereby denied and strict proof thereof is hereby demanded.

### **SECOND DEFENSE**

Plaintiff's *Complaint* fails to state a claim upon which relief can be granted, in whole or in part.

**THIRD DEFENSE**

No action or omission on the part of Defendant proximately caused the accident at issue or the alleged injuries and damages of Plaintiff, and therefore Plaintiff cannot recover from Defendant.

**FOURTH DEFENSE**

Defendant breached no legal duty owing Plaintiff, and therefore Plaintiff cannot recover from Defendant. At all times, Defendant exercised that degree of care required by law; therefore, Plaintiff may not recover from Defendant in any sum or manner whatsoever.

**FIFTH DEFENSE**

Defendant asserts that the defenses of contributory and comparative negligence may bar Plaintiff from recovery or shall apply such that any recovery awarded her must be reduced in proportion to her negligence with respect to the purported accident at issue.

**SIXTH DEFENSE**

Plaintiff did not timely perfect service of process upon Defendant and thus Plaintiff's Complaint should be dismissed pursuant to O.C.G.A. §§ 9-11-12(b)(5) and 9-11-4.

**SEVENTH DEFENSE**

To the extent applicable, Plaintiff's claims are barred by the defenses set forth in O.C.G.A. § 9-11-8(c), including the doctrines of estoppel, laches, license, waiver, and statute of limitations.

**EIGHTH DEFENSE**

Defendant reserves the right to set forth further and/or additional defenses as may be revealed via discovery.

WHEREFORE, having fully responded to the averments in Plaintiff's *Complaint*,  
Defendant The Kroger Co. respectfully prays:

- (a) That judgment is rendered in favor of Kroger and against Plaintiff;
- (b) That Kroger be discharged with all costs cast against Plaintiff;
- (c) That this matter be tried by a jury of twelve persons regarding any issues not  
subject to summary adjudication; and
- (d) For such other and further relief as is just and proper.

Respectfully submitted, this the 20th day of December, 2023.

**GRAY, RUST, ST. AMAND,  
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/s/ Sarah Raquel L. Lisle  
Matthew G. Moffett  
Georgia Bar No. 515323  
Sarah Raquel L. Lisle  
Georgia Bar No. 412593  
*Attorneys for Defendant The Kroger Co.*

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing DEFENDANT THE KROGER CO.'S ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT FOR DAMAGES using the Court's electronic filing-and-service system, which will send electronic notification to all parties having appeared of record in this action:

Keith R. Foster, Esq.  
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Respectfully submitted, this the 20th day of December, 2023.

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DEF KROGER'S JURY DEMAND FILED IN STATE COURT

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

EBONY BURROUGHS,

Plaintiff,

v.

THE KROGER CO.,

Defendant.

Civil Action File No.:  
23EV006980

JURY TRIAL DEMANDED

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DEFENDANT THE KROGER CO.'S JURY DEMAND

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COMES NOW Defendant The Kroger Co. ("Kroger"), named as defendant in the *Complaint for Damages* of Plaintiff Ebony Burroughs, by and through undersigned counsel, pursuant to O.C.G.A. § 15-12-122(a)(2), and hereby demands that this case be tried by a jury of twelve persons.

Respectfully submitted, this the 20<sup>th</sup> day of December, 2023.

**GRAY, RUST, ST. AMAND,  
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Georgia Bar No. 515323  
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Georgia Bar No. 412593  
*Attorneys for Defendant The Kroger Co.*

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing DEFENDANT THE KROGER CO.'S JURY DEMAND with the Clerk of Court using the Odyssey electronic filing system, which will send electronic notification to the following:

Keith R. Foster, Esq.  
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Respectfully submitted, this the 20<sup>th</sup> day of December, 2023.

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